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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/697,235	10/26/00	KNIGHT	C NVI 5044.1

000321 IM52/0214  
SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS MO 63102

EXAMINER

BHAT, N

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

02/14/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/697,235

Applicant(s)

KNIGHT ET AL.

Examiner

N. Bhat

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-33 is/are rejected.
- 7) ☒ Claim(s) 16,17 and 34-37 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

### DETAILED ACTION

1. Applicant's preliminary amendment has been entered. However, there is an error in the serial numbers continuing data. Applicant should recite that this application is a Continuation of **09/333,095**, filed **June 15, 1999**, which is now US Patent **6,183,786**. Appropriate correction is required to ensure applicant receives benefit to the correct continuing application.
2. Applicant is advised that on page 6 of the specification, line 27 the hyperlink [HTTP://www.inform.umd.edu](http://www.inform.umd.edu) is impermissible incorporation by reference. See MPEP 608.01 (p), paragraph I. Applicant is kindly requested to delete this reference in the specification. If the hyperlink and/or other forms of browser-executable codes are part of applicant's invention and are necessary to be included in the patent application in order to comply with requirements of 35 U.S.C. 112, first paragraph, and applicant does not intend to have these hyperlinks to be active applicant should advise the examiner if this is the case. If the hyperlink is required for 112, 1<sup>st</sup> reasons, the office will disable these hyperlinks when preparing the patent text to be loaded onto the PTO web database.
3. Regarding the computer program DAIRYLP AND CNCPS, applicant is requested to inform the Office whether this program is copyright protected. If either of these computer programs are copyright protected then the claim would be rejected and would require appropriate correction which would applicant can do by avoiding the recitation of the specific computer program.
4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

Art Unit: 1761

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-15 and 18-33 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-18 and 1-11 respectively of U.S. Patent No. 6,183,786. Although the conflicting claims are not identical, they are not patentably distinct from each other because the single inventive concept which is generic both to the instant application and that of the '786 patent is to a ruminant ration and process for formulating a ruminant food ration comprising a plurality of natural or synthetic feed ingredients which comprises one or more grains; a hydroxy analog of methionine selected from the group consisting of 2-hydroxy-4-(methylthio)butanoic acid, alkaline earth salts of 2-hydroxy-4-(methylthio)butanoic acid, zinc salts of 2-hydroxy-4-(methylthio)butanoic acid, alkane esters of 2-hydroxy-4-(methylthio)butanoic acid, alkane amides of 2-hydroxy-4-(methylthio)butanoic acid, and oligomers of 2-hydroxy-4-(methylthio)butanoic acid, and optionally a bypass fat; wherein the amount of hydroxy analog of methionine is included within the ruminant feed ration at a level determined to be necessary to meet the methionine requirements of the ruminant. The methionine requirements being determined from the nutritional content of

Art Unit: 1761

the ingredients other than the hydroxy analog of methionine and on the basis that at least 20% of the hydroxy analog of methionine is assumed to be available. The difference between the instant invention and that of the '786 patent is both the process and the ration product includes the step of determining the methionine needs of the ruminant which is an obvious step or an obvious omission in the process as it is the intention of optimizing the milk production in dairy cows by formulating a ruminant feed ration by increasing the methionine requirement in the ruminant and the omission of the determining the methionine needs of the ruminant is obvious to one having ordinary skill in the art familiar with optimizing milk production in dairy cows.

6. Claims 16-17 and 34-37 are free of the prior art and would be allowable if re-written in independent form.

7. With a timely filed and properly executed terminal disclaimer this case would be in condition for allowance as the ruminant food ration and process for formulating a ruminant food ration in which the methionine needs of the ruminant are determined and then a ration is formulated by identifying a plurality of nature or synthetic feed ingredients and the nutrient composition of each of the ingredients are identified wherein one of the ingredients is 2-hydroxy-4-(methylthio)butanoic acid or salt, amine or ester thereof which comprises one or more grains and optionally a bypass fat wherein the ration is formulated on the basis that at least 20% of the hydroxy analog of methionine is assumed to be available for absorption by the ruminant thereby increasing the milk production of the ruminant.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879.

The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat  
Primary Examiner  
Art Unit 1761